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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,

Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

REPLY OF THE STATE OF OREGON

LEE JOHNSON
Attorney General of Oregon

JOHN W. OSBURN
Solicitor General

PHILIP J. ENGELGAU
Assistant Attorney General
Attorneys for
State of Oregon

TABLE OF CONTENTS

	Page
Reply	1

Authorities Cited

Texas v. New Jersey, 379 U.S. 674 (1965)	2, 3, 4

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REPLY

POSITION OF THE STATE OF OREGON

The State of Oregon agrees with the contentions made by plaintiffs in this matter, and urges the Court to adopt the rule proposed by the Commonwealth of Pennsylvania.

DISCUSSION

The inequities which would result if this Court were to adopt the recommendations of the Special Master have

been clearly stated in the exceptions filed by the plaintiffs and in the Brief Amicus Curiae of the American Express Company. Thus, for purposes of this reply, it is unnecessary to repeat what has already been said. There is, however, one point which merits brief discussion.

In his analysis of the law and facts in this case, the Special Master found no justification for departing from the rules established by this Court in *Texas v. New Jersey,* 379 U. S. 674 (1965). It is clear from his report that in recommending the application of the rules of that case to unclaimed money orders, he was strongly influenced by the effect a departure therefrom might have on the property rights of those individuals who are entitled to such unclaimed funds. In discussing the rule proposed by the Commonwealth of Pennsylvania, the Special Master stated:

> "The principal difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin."

Apparently, it was with the foregoing in mind that he recommended the application of the rules set forth in *Texas v. New Jersey.* He reasons that property rights would not thereby be cut off or adversely affected by state action in an *in rem* proceeding "in a forum having no continuing relationship to any of the parties to the proceedings."

Oregon believes that the application of such reason-

ing to the present facts does not produce a fair and equitable result. The justification for permitting the State of New York to escheat unclaimed money orders where there is no known address for either the purchaser or the intended recipient, must necessarily be based solely on the fact that New York has a continuing relationship to Western Union in that Western Union is organized under the laws of that state. However, this factor has virtually no effect on the property rights of the persons entitled to claim such funds. Under the facts of this case, the property rights of an individual who lives in Oregon, for instance, would not be any more protected by an *in rem* proceeding in the State of New York than by a proceeding in any other state simply because Western Union is domiciled in New York. Under the present facts, this is especially so because in most instances neither the purchaser or the intended recipient of a money order have any contact with the State of New York. In the absence of any last known address, the *only* state known with certainty to have some relationship to the claimant would be the state of purchase.

In *Texas v. New Jersey, supra,* the Court considered corporate domicile to be but a minor factor in its decision. 379 U. S. at 680. Under the facts of this case, the question of corporate domicile is likewise a minor factor. With respect to the protection of the property rights under consideration, the relationship between New York and Western Union is insignificant, and thus, the Special Master placed unwarranted importance thereon.

There is no inconsistency in contending that the rules established in *Texas v. New Jersey* should not be applied to the present set of facts, while at the same time we rely on the rationale of the case as support for our position. The philosophy of the Court is set forth on page 683 at follows:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the states." 379 U. S. 674.

The Court declared its intent to distribute escheats among the states fairly and in proportion to the commercial activities of their residents. Since the rule proposed by Pennsylvania would furnish the most fair and equitable method for the distribution of unpaid money orders, its adoption in this case would be in harmony with the foregoing rationale, while mechanical application of the rule followed in *Texas v. New Jersey* would lead to a result inconsistent with its rationale.

CONCLUSION

Oregon urges the Court to adopt the rule proposed by the Commonwealth of Pennsylvania because, in terms of equity and fairness among the states, it will produce the better result.

Respectfully submitted,

LEE JOHNSON
Attorney General

JOHN W. OSBURN
Solicitor General

PHILIP J. ENGELGAU
Assistant Attorney General